TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	2
STATEMENT	2
REASONS FOR DENYING THE WRIT	5
CONCLUSION	14

TABLE OF AUTHORITIES

Case	Page
Banco Nationale de Cuba v. Sabbatino, 376 U. S. 398, (1964)	10, 11, 12
Clay v. Sun Insurance Office, Ltd., 377 U. S. 179, (1964)	8
Confederation Life Association v. Reyes Arida Conte, 254 So. 2nd 45, Cert. granted, Sup. Ct. Fla. No. 41,888, July 19, 1972	11
Confederation Life Association v. Ugalde, 164 So. 2nd 1 (Fla.), Cert. denied, 379 U. S. 915 (1964)	4
Confederation Life Association v. Vega v. Armnian, 207 So. 2nd 33, (Fla. 3rd Dist. 1968), affirmed 211 So. 2nd 169, (1968)	11
Fleet Messenger Service, Inc. v. Life Insurance Company, (CA2NY) 315 F.2d 593 (1963)	7
Galveston H. & S. A. R. Co. v. Wallace, 233 U. S. 481, 32 S.Ct. 205, 56 L.Ed. 516, (1912)	7
Hartford Accident & Indemnity Company v. Delta & Pine Land Company, 292 U. S. 143, (134)	9

TABLE OF AUTHORITIES (cont.)

Case	Page
Hilton v. Guyot, 159 U.S. 113, 16 S.Ct. 139, 40 L.Ed. 95, (1895)	10
Home Insurance Company v. Dick, 281 U. S. 397 (1930)	8
Klaxon Company v. Stentor Mfg. Co., 313 U. S. 487, 61 S.Ct. 1020, 85 L.Ed. 1477, (1941)	13
Lara v. Confederation Life Association, 250 So. 2nd 42, (Fla. 1971), Cert. denied, No. 71-1487, October 23, 1972	4, 5, 11
Mann v. Compania Petrolia Trans Cuba, S.A., 32 Misc. 2nd 790, 223 NYS 2d 900, (1962)	9
Moscow Fire Insurance Company v. Bank of New York, 280 N. Y. 286, N. E. 2nd 758, (1939)	12
Pan American Life Insurance Company v. Blanco, (S. D. Fla. 1963) 221 F. Supp. 219, affirmed 362 Fed. 2d, 167, (1966)	10
Royce Chemical Company v. Sharples Corp., (CA2NY) 285 F.2d 183 (1960)	7
Second Russian Insurance Company v. Miller, 297 Fed. 404, (C. A. 2d CIR.) (1924)	12

TABLE OF AUTHORITIES (cont.)

Case	Page
Union Trust Company v. Grossman, 245 U. S. 412, 38 S.Ct. 147, 62 L.Ed. 368 (1918)	7
U. S. v. Belmont, 301 U. S. 324; 57 S.Ct. 758, 81 L.Ed. 1134 (1937)	10
U. S. v. Curtis Wright, 299 U. S. 304; 57 S.Ct. 216, 81 L.Ed. 255 (1936)	10

CONSTITUTIONAL AND STATUTORY PROVISIONS

United States Constitution, Amendment XIV	8
Bretton Woods Agreement a/k/a International Monetary Fund Agreement, Dec. 27, 1945; 60 Stat. 1401	11

MISCELLANEOUS

17 Am. Jur. 2d, Contracts § 420 (1964)	12
17 C.J.S. Contract § 12.2 - 12.5 (1963)	6

in the
Supreme Court
of the
United States

OCTOBER TERM, 1972

No. 72-966

CONFEDERATION LIFE INSURANCE COMPANY,
Petitioner,

vs.

REYES ARIDA CONTE,
Respondent.

REPLY BRIEF OF THE RESPONDENT TO THE PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

The Respondent, accepts the references to the opinions below, jurisdiction and constitutional provisions involved as set out in the Petition.

QUESTIONS PRESENTED

In order to focus on the various issues, it is necessary to restate the questions presented by the Petitioner in the following manner:

1. Whether Florida has violated the due process clause of the 14th Amendment by its applying its own local law to an insurance contract performable within the State of Florida.

2. Whether Florida has transgressed international law and thus infringed the authority of the Federal Government over foreign affairs by applying local law to a transaction with which Florida has sufficient connection.

3. Whether Florida could disregard the effect of Cuban currency legislation and therefore has not acted inconsistently with the Act of State Doctrine, which is not mandatory upon the courts of the United States when the contract is governed by the law of one of the American states.

STATEMENT

The Respondent executed an application for life insurance with the Petitioner's company early in 1944[1] (Tr. 19). This application was eventually accepted by the Petitioner, whereupon, a policy was issued to the Respondent by the Petitioner and the first premium payment was made thereon in United States dollars, in Havana, Cuba

[1]References designated "Tr. —" are to the partial transcript of record file in the Supreme Court of Florida.

(Tr. 28,131). During this period, the value of the United States dollar and that of the Cuban peso were equivalent (Tr. 72-74). Consequently, payments for the insurance policy were accepted at this time in both Cuban pesos and United States currency (Tr. 73). The endowment portion of the policy provided for remittance to the Respondent after a period of 20 years, the sum approximating $4,000 in United States currency (Tr. 23). This provision also provided that acceptance of this amount was to be in Havana, Cuba, in United States dollars. However, prior to the date of maturity, acts by the Cuban government forced the Respondent to leave Cuba. After the Respondent's flight from Cuba, the premiums on the policy were paid by automatic premium loans (Tr. 135-36). In 1964, upon the maturity date of the endowment provision of the policy, the Respondent sought to have the Petitioner pay, in the United States in United States dollars, pursuant to the policy. The Respondent, at this time, had made all payments as required under the policy and had fulfilled all other conditions precedent to his recovery under the endowment provisions.

The Petitioner, Confederation Life Insurance Company, a Canadian Mutual Insurance Company, offered to pay the Respondent in pesos, if the Respondent would journey to Havana, Cuba, and subject himself to imprisonment within that country (Tr. 137). The insurance company argued that because Cuban legislation subsequent to the signing of the endowment insurance contract, stated any contract payable in dollars in Cuba would be converted to one payable to equivalent number of pesos; that any payment of the insurance contract would be paid in Havana, Cuba, in pesos.

The trial court, the District Court of Appeal for the 3rd District of the State of Florida, and the Supreme Court, State of Florida, all have acknowledged the obligation of the Petitioner to pay the Respondent in the United States. All three courts acknowledged that the equities of the situation could not be counter-balanced by the life insurance company's claim that its assets had been frozen in Cuba and cannot be removed. The sole issue in the Supreme Court of Florida was the question of whether the company should pay in dollars or in pesos. An important consideration which was presented before each court, was the fact that since Castro's rise to power, the value of the Cuban peso has dropped to a level far below par value of the United States dollar and that to grant any reward in such currency would be a distortion of the amount of money that Respondent paid into the insurance company.

The Supreme Court of the State of Florida allowed the Respondent to recover in United States currency. The court relied upon the law of *Lara v. Confederation Life Association*, 257 So. 2nd 42 (Fla. 1971), upon which this court has already denied certiorari. The Florida Supreme Court, after analyzing all previous decisions, made it clear that *Confederation Life Association v. Ugalde*, 164 So. 2nd 1 (Fla.), Cert. denied, 379 U. S. 915 (1964), was no longer the law of the state. The court clearly demonstrated that the equitable questions involved along with the state's substantial contact with the hundreds of thousands of Cuban refugees who have fled into the State of Florida since the rise of Castro, would enable it to apply a reasonable solution to an otherwise possibly unfair result. The Florida court, when applying its laws, compelled the life insurance company to meet its obligations based on the

insurance contract for which it had received funds during a 20 year period. Secondly, the Florida Supreme court found that the equities of the situation and the contact between the Cuban refugees and the State of Florida and the need to protect their welfare, gave the State of Florida sufficient contact to apply local law rather than look at foreign law. Throughout the proceedings below, it is evident that the Florida courts have not considered it necessary to apply the Act of State Doctrine because of the nature of the claim, and a belief that this doctrine does not apply because of Cuba's leaving the International Monetary Fund.

REASONS FOR DENYING THE WRIT

The Supreme Court has previously reviewed the issues in this case in *Confederation Life Insurance Co. v. Lara*, No. 71-1487, in which the Court denied certiorari.[2] The allegations presented before the court in that case are substantially the same as the contentions presented by the Petitioner in the instant case.

The Petitioner argues that the State of Florida had no substantive reason for applying its local law, because the State lacked sufficient contact with the subject matter and, furthermore, all conditions and incidents of the contract took place in Cuba. Consequently the Petitioner argues that Cuban law, not Florida law, should apply.

However, it is the Respondent's contention that even though the situs of the original insurance contract may have been Cuba, the situs of the endowment provision of

[2]Certiorari was denied on October 23, 1972.

this contract was Florida. The original insurance contract entered into in Cuba on the 8th day of February, 1944, states on its face as follows:

> "The Confederation of Canada Life Insurance Association, by virtue of this policy of insurance and in accordance with the conditions herein stated, agrees to pay the sum of Four Thousand Dollars to the insured, if living, on the 8th day of February, 1964, but should the insured die before, while this policy is in force, to the legal heirs, executors, administrators or assigns of the insured . . . ."[3]

The words quoted above make the insurance contract a conditional contract, and, therefore, one which could not be completed until the condition was performed. The insured must die before the insurance company is obligated to pay benefits to his heirs. Further, as in the instant case, the insured must live until February of 1964 before he could receive payment on the endowment provision of the contract. Generally, a contract is considered as having been entered into in that place in which the last act to complete the contract is performed. 17 C. J. S. Contract §12.2-12.5 (1963). Consequently, the endowment provision of the policy constitutes a continuing irrevocable conditional offer by the company to pay, which offer matures into an obligation to pay only upon the conditions having been satisfied.

In addition to the performance of the conditional contract being in Florida, the Florida court had sufficient contact with the subject matter in the instant case to

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[3]This statement can be found in (Tr. 19).

acquire jurisdiction over it and therefore to apply its local law. If the primary question, in the instant case, revolves around Florida's application of its local law, rather than applying the law of the place where the contract was signed, it is necessary to indicate that the basic premises for the application of any conflict of laws doctrine extends beyond the mere principle of lex loci contractus. The forum, state, if it has significant contacts with the matter in dispute, has jurisdiction over the subject matter and can apply its local laws to the case. *Fleet Messenger Service, Inc. v. Life Insurance Company.* (CA2NY) 315 F. 2d 593; *Royce Chemical Company v. Sharples Corp.* (CA2NY) 285 F. 2d 183.

The reason for the necessity of acknowledging the above precept is clear when it is realized that the conflict of law doctrines are not limited to mechanical steps, but reflect the gravity of the issues. The equities of the situation, regardless of phantom-like qualities, are often considered. The consideration of these issues tempers the court's willingness or unwillingness to apply what it views as the right law. There is nothing repugnant to the due process clause when a court permits the application of its local law to the question at issue, when that state's public policy or interest in the subject matter so justifies. *Union Trust Company v. Grossman*, 245 U. S. 412, 38 S. Ct. 147, 62 L. Ed. 368; *Galveston, H. & S. A. R. Co. v. Wallace*, 233 U. S. 481, 32 S. Ct. 205, 56 L. Ed. 516.

The contacts that the State of Florida had with the case at bar were more than sufficient to grant it jurisdiction. Both parties were present within the State of Florida, the Petitioner was a corporation doing business within Florida and holding assets in the United States. The Re-

spondent is representative of over 200,000 Cuban refugees who live in the State of Florida. The fact that the State of Florida is cognizant of their welfare and their needs does not require substantiation beyond the evidence that the Supreme Court of the State of Florida's series of decisions has demonstrated that its policy is one of enforcing the claims of Cuban refugees upon corporations that entered into obligations with these refugees while they were in Cuba.[4]

It is easy to perceive that Florida has a vested interest in the welfare of Cuban refugees.

The Petitioner, cognizant of the importance of the contacts between the State of Florida and the Respondent, has presented several cases attempting to demonstrate the position that Florida in applying its local law was violative of the 14th Amendment due process clause. However, none of these cases are of significant importance. In each case concerning the application of local law between states within the United States, it was deemed that the forum state did not have any contact with the issues. However, the court in *Clay v. Sun Insurance Office, Ltd.*, 377 U. S. 179, (1964), affirmed the permissibility of applying local law if the state had sufficient reason and contacts as in the instant case. The situation in the present case can be easily distinguished from the one found in *Home Insurance*

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[4]The series of decisions so demonstrating are: *Confederation Life Association v. Vega y Armnian*, 207 So.2nd 33, (Fla. 3rd Dist. 1968), affirmed 211 So. 2nd 169, (1968); *Lara v. Confederation Life Association*, 250 So. 2nd 42, (Fla. 1971), Cert. denied, No. 71-1487, Oct. 23, 1972; *Confederation Life Association v. Reyes Arida Conte*, 254 So. 2nd 45, Cert. granted, Sup. Ct. Fla. No. 41,888 July 19, 1972.

Company v. Dick, 281 U. S. 397 (1930) because Florida has sufficient contacts herein. These contacts extend beyond the mere fact that the Respondent lives in Florida. Florida has accepted the responsibility for the welfare of over 200,000 refugees, in addition, the Petitioner does business within the state and has assets within the state that can be readily used to satisfy any judgment against them. The Petitioner tries to further substantiate its claim that the contacts in the subject case were wholly inadequate by citing *Hartford Accident & Indemnity Company v. Delta & Pine Land Company*, 292 U. S. 143, (1934), to demonstrate that the relationship between the forum state and the issues was too limited to permit application of the forum state's law. However, the Hartford case, quite to the contrary, expressed within its opinion clear evidence that if contacts are sufficient, the forum state may apply its local law:

> "Cases may occur in which the enforcement of a contract as made outside a state, may be so repugnant to its vital interests as to justify its enforcement in a different manner." 292 U. S. at 150.

It is apparent that if contacts are sufficient, the forum state can apply its local law. The Petitioner, however, urges that even if the state has sufficient contacts, the Act of State Doctrine would prevent the forum state from applying its local law instead of the law of Cuba. To the contrary, the Act of State Doctrine applies only to agreements whose center of gravity is within the territorial dominion of foreign states. *Mann v. Compania Petrolia Trans Cuba, S. A.*, 32 Misc. 2nd 790, 223 NYS 2d

900, (1962). The doctrine does not apply to contracts that are governed by the law of one of the American states. *Pan American Life Insurance Company v. Blanco*, (S. D. Fla. 1963) 221 F. Supp. 219, affirmed 362 Fed. 2d, 167. As previously presented, the contract was performed in the United States and subject to law of the state in which performance occurred.

However, for the sake of argument, if it is conceded for the present that the State of Florida did not have sufficient contacts to warrant the use of local law, it still can be demonstrated that the Act of State Doctrine does not compel the courts of the United States to apply foreign law. The Act of State Doctrine is based upon the relationship between states called comity, and comity is not an absolute obligation. *Hilton v. Guyot*, 159 U. S. 113, 16 S. Ct. 139, 40 L. Ed. 95. The laws of a foreign state have no extra territorial effect aside from the courtesy of one state to apply its laws. *U. S. v. Belmont*, 301 U. S. 324; 57 S. Ct. 758, 81 L. Ed. 1134; *U. S. v. Curtis Wright*, 299 U. S. 304, 57 S. Ct. 216, 81 L. Ed. 255. Mr. Justice Harland in delivering the court's decision in *Banco Nationale de Cuba v. Sabbatino*, 376 U. S. 398, announced:

> ". . . international law does not require application of the doctrine as evidenced by the practice of nations. Most of the countries rendering decisions in the subject failed to follow the rule rigidly." 376 U. S. at 421.

Consequently, mandatory application of the Act of State Doctrine has not been the practice of the courts in the United States.

Although the court in *Sabbatino* seemingly paints a broad application of the Act of State Doctrine, Mr. Justice Harland clearly indicated that the doctrine as enunciated within the court's decision in *Sabbatino* would be limited to a very narrow area.

> "Therefore, rather than laying down or reaffirming any inflexible and all encompassing rule in this case, we decide only that the judicial branch will not examine the validity of taking a property within its own territory by a foreign sovereign government, extant and recognized by this country at the time of suit, in the absence of a treaty or other unambiguous agreement regarding controlling legal principles, even if the complaint alleges that the taking violates customary international law." 376 U.S. at 423.

Aside from the fact that this court narrowly applies the Act of State Doctrine, it is necessary to point out that the State of Florida applied the required recognizable standard, mentioned in *Sabbatino* by following the Bretton Woods Agreement, commonly known as the International Monetary Fund Agreement, December 27, 1945, Article 8, 60 Stat. 1401. The State of Florida in its decisions; *Confederation Life Association v. Vega y Armnian*, 207 So. 2nd 33, (Fla. 3rd Dist. 1968), affirmed 211 So. 2nd 169, (1968); *Lara v. Confederation Life Association*, 250 So. 2nd 42, (Fla. 1971), Cert. denied, No. 71-1487, October 23, 1972; *Confederation Life Association v. Reyes Arida Conte*, 254 So. 2nd 45, Cert. granted, Sup. Ct. Fla. No. 41,888 July 19, 1972, acknowledged that the monetary laws of a non-member nation are not given extra terri-

torial effect by terms and conditions of the Brentton Woods Agreement. This agreement provides an observable standard that is clear and unambiguous. The agreement prohibits the use within a member signatory of the agreement, the use of non-member foreign monetary laws. The Supreme Court of Florida viewed Cuba's failure to remain within the monetary fund as sufficient reason for the United States not to apply Cuba's monetary laws in accordance with the agreement.

In addition to complying with the spirit of the *Sabbatino* decision by following the standard outlined therein, it is equally important to note that the courts of the United States have long ignored the Act of State Doctrine when public policy would be contravened by application of the doctrine. 17 Am. Jur. 2d, Contracts §420. The United States has long refused to enforce the penal laws of a foreign country. Similarly, revenue laws of sovereign countries have been denied enforcement within this country.[5] This application of public policy to limit the Act of State Doctrine is, particularly exhibited in the area of foreign confiscatory decrees. *Moscow Fire Insurance Company v. Bank of New York*, 280 N.Y. 286, N.E. 2nd 758, (1939). The courts have gone so far as to recognize the private property rights of foreign individuals after their own governments have denied them the right to continue ownership of such property. *Second Russian Insurance Company v. Miller*, 297 Fed. 404, (C.A. 2d CIR.). Although these cases do not represent the same issues that are presented before this court, they clearly indicate the vari-

[5] See Mr. Justice White's dissent in Banco Nationale de Cuba v. Sabbatino footnotes 9 and 11.

ous courts willingness to avoid the Act of State Doctrines for those areas of public policy that the court deems of significant importance to counter-balance the need to follow foreign law.

It is evident that the Supreme Court of the United States has final review on any federal question, but the state courts are free to determine whether a given matter is to be decided under the law of the forum or any other law. Nothing in the Constitution of the United States insures that foreign countries will have unlimited extra territorial recognition of their laws. *Klaxon Company v. Stentor Mfg. Co.*, 313 U. S. 487, 61 S. Ct. 1020, 85 L. Ed. 1477.

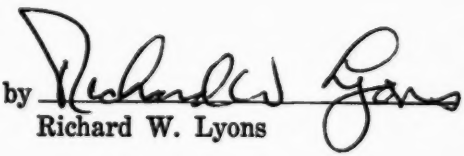
CONCLUSION

It follows from the above presented arguments that the State of Florida was justified in applying its own law to the case at bar. This justification stems from the fact that the contract was performed in Florida and Florida had other sufficient contacts to warrant its finding jurisdiction over the subject matter. Florida did not violate the Act of State Doctrine because the Act of State Doctrine was inapplicable to the laws because of Florida's relationship with the matters in dispute. Furthermore, the Act of State Doctrine would not be applicable because of Cuba's failure to remain a member of the International Monetary Fund. In addition, it is evidenced that the United States courts have not blindly applied any Act of State Doctrine but have carefully examined the situation and equities involved and rendered an appropriate decision. It is therefore urged that this Petition for a Writ of Certiorari be denied.

Respectfully submitted,

LYONS AND SMITH, P. A.
Attorneys for Respondent
1230 N. W. 7th Street
Miami, Florida 33125

February 1973

by 
Richard W. Lyons

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Respondent's Reply Brief was mailed to JOHN G. LAYLIN, WILLIAM H. ALLEN and MICHAEL BOUDIN, at 888 Sixteenth Street, N.W., Washington, D.C. 20006; and to THOMAS H. ANDERSON, PHILLIP G. NEWCOMM at: SHUTTS & BOWEN, 1000 First National Bank Building, Miami, Florida 33131; and to COVINGTON & BURLING, 888 Sixteenth Street, N.W., Washington, D.C. 20006, attorneys for Petitioner, this 7 day of February, 1973.

LYONS AND SMITH, P.A.
Attorneys for Respondent

By: Richard W. Lyons
RICHARD W. LYONS